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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,554	11/27/2001	Kenneth S. Bloom	17724 USA	8757

7590 08/23/2005
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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/994,554	Applicant(s) BLOOM ET AL.	
Examiner Robin A. Hylton	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 June 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3-24, 34-46 and 59-65 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 3-24, 34-46 and 59-65 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 November 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

1. The indicated allowability of claims 12,20,24,23,42,and 46 is withdrawn in view of the newly discovered references to Batteazzore, Kawchitch, and Kawahara et al. Rejections based on the newly cited references follow.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "disk loosely retained parallel to but separate from" the base wall must be shown or the feature(s) canceled from the claim(s). The drawings only show the disk separate from the closure shell and engaged with the closure shell. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 3-24, 34-46, and 59-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims set forth the "disk loosely retained parallel to but separate from" the base wall, but provides no structure for this occurrence. How is the "disk loosely retained parallel to but separate from" the base wall?

4. Claims 3-24, 34-46, and 59-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims set forth the "disk loosely retained parallel to but separate from" the base wall, but provides no structure for this to occur. How is the "disk loosely retained parallel to but separate from" the base wall?

5. Claims 3-24, 34-46, and 59-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The claims set forth the "disk loosely retained parallel to but separate from" the base wall, but provides no structure for this occurrence. How is the "disk loosely retained parallel to but separate from" the base wall?

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 3-8, 13-20, 37-42, 59, 60, 64, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takano (US 5,984,124) in view of Kawahara et al (JP 2-258325).

Takano teaches the claimed closure and container except for the resilient liner molded onto the disk **9**. See column 3, lines 19-21 regarding the plastic material. See figure 6 depicting the protrusion 14 extending around a peripheral portion of the flat disk.

Kawahara teaches it is known to mold a liner **25** onto a disk **24**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a resilient liner molded onto the disk for engaging the mouth of an associated container. Doing so provides a more effective and reliable seal between the closure cap and the container.

Regarding the liner as a barrier layer, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the resilient liner of a barrier material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so maintains the integrity of the container contents against degradation.

8. Claims 11, 12, 22-24, 45, 46, and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battezzore in view of Kawahara.

Battezzore teaches a closure having an elastic disk having a flat base wall with a depending annular ring **16** and a depending rib **15, 13**. The reference does not specifically state the material of the cap, although it is shown to be the same as the elastic disk, and does not teach a resilient liner molded onto the disk. Thus, the cap is also an elastic material.

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Wherein it can be argued the cap and disk are not plastic, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the cap and disk of plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so provides an easily reclosable and recyclable elastic, plastic closure free of sharp edges which can cause damage and/or injury.

Kawahara teaches it is known to mold a liner **35** onto a disk **34**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a resilient liner molded onto the disk for engaging the mouth of an associated container. Doing so provides a more effective and reliable seal between the closure cap and the container.

Regarding the liner as a barrier layer, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the resilient liner of a barrier material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so maintains the integrity of the container contents against degradation.

Allowable Subject Matter

9. Claims 9,10,21,34-36,43,44 appear to avoid the art and to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. These claims illustrate the disk of figure 9 of the instant application.

Response to Arguments

10. Applicant's arguments, see pages 17-28, filed June 2, 2005, with respect to the rejection(s) of claim(s) 3-24, 34-46, and 59-65 under 35 USC 103 have been fully considered

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and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Battagazzore in view of Kawahara and Takano in view of Kawahara.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner

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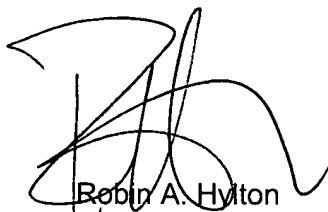
can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
August 20, 2005



Robin A. Hylton
Primary Examiner
GAU 3727